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In re Application of:) Art Unit: 1635
Stephen J. VESPER) Examiner: SHAHANA-SHAH
Serial No.: 09/866,793) Confirmation No. 5682
Filed: May 30, 2001) Washington D.C.
For: METHODS FOR ISOLATING) August 16, 2001
AND USING FUNGAL)
HEMOLYSINS)

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8/20/01

RESPONSE TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
Washington, D.C. 20231

The Office Action of July 20, 2001, in the nature of a requirement for restriction, has been carefully reviewed. Favorable consideration is respectfully requested.

Restriction has been required between what the Examiner considers to be five patentably distinct inventions, namely,

Group I directed to a protein (fungal hemolysin) and a method of making the protein, presently comprising claims 1, 6-9, 11-12 and 16-18;

Group II, drawn to an antibody, presently comprising claim 2;

Group III, drawn to an *in vitro* method of diagnosis, presently comprising claims 3-5;

Group IV, drawn to an antibody and fungal hemolysin conjugate and method of using, presently comprising claims 10 and 15; and

Group V, drawn to a method of immunizing using fungal hemolysin, presently comprising claims 13-14.

Applicants hereby provisionally elects, with traverse and without prejudice, claims 3-5, Group III, directed to an *in vivo* method of diagnosis.

This restriction requirement is traversed on the basis of MPEP Section 803, second paragraph, which requires that there be a substantial burden in examining plural groups, even if the restriction requirement is otherwise correct. In the present case, the inventor has discovered a method for isolating hemolysin proteins so that these proteins can be used to demonstrate exposure to fungi for environmental or medical evaluations, as well as to prepare vaccines against fungal infection. One would expect that a search of the patents and literatures, which will be conducted online, directed to the fungal hemolysin *per se* would also include methods of using the fungal hemolysin, for example, in a diagnosis. Since there appears to be no serious burden, the restriction requirement should be withdrawn, and such is respectfully requested.

If the restriction requirement is maintained, it will be clear on the record that the PTO considers the five groups to be patentably distinct from one another *i.e.*, *prima facie* non-obvious from one another. This means that a

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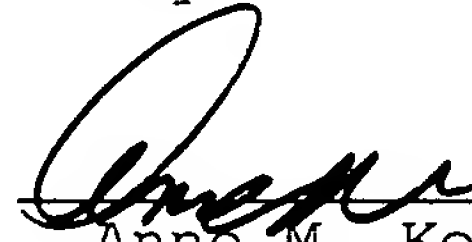
reference identical to the one group would not render the
other group *prima facie* obvious.

Favorable consideration is respectfully requested.

Respectfully submitted,

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